

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

DARYL C. TILLMAN and  
MARSLETTE D. TILLMAN,

2:12-CV-346 JCM (RJJ)

**Plaintiffs,**

V.

**QUALITY LOAN SERVICE  
CORPORATION, et al.,**

### Defendants.

## ORDER

17 Presently before the court is plaintiffs Daryl C. Tillman, et. al.’s motion to remand. (Doc.  
18 #7). Defendant Quality Loan Service Corporation (“Quality”) filed an opposition. (Doc. #8).  
19 Plaintiffs then filed a reply. (Doc. #14). Also before the court is Quality’s motion to dismiss. (Doc.  
20 #6). Plaintiffs filed an opposition. (Doc. #10). Quality then filed a reply. (Doc. #11).

21 The property at issue in this case is located at 7369 Arlington Garden Street, Las Vegas,  
22 Nevada. (Doc. #1, Ex. 3). Plaintiffs purchased the property by executing a note and a deed of trust  
23 on March 30, 2009, in which plaintiffs promised to repay the sum of \$244,266. (Doc. #6, Ex. 1).  
24 Quality recorded a notice of default and election to sell on June 28, 2010. (Doc. #6, Ex. 4). Quality  
25 recorded a notice of trustee's sale on January 20, 2012. (Doc. #6, Ex. 5). The property has not yet  
26 been sold. (Doc. #6). Quality removed this case to federal court on March 2, 2012. (Doc. #1).

1     **Motion to remand (doc. #7)**

2                 The motion to remand asserts that this court should remand the case to state court because:  
 3                 (1) the parties should be realigned such that Quality is the plaintiff for purposes of removal, and (2)  
 4                 the \$75,000 amount in controversy jurisdictional requirement has not been met. (Doc. #7).

5                 Plaintiffs first argue that the court should realign the parties such that Quality is the plaintiff  
 6                 for purposes of removal. (Doc. #7). Pursuant to 28 U.S.C. § 1441(a), only defendants have the right  
 7                 to remove a case from state court to federal court. Thus, if the court realigns the parties, as the  
 8                 plaintiff Quality would not have the right to remove the case. (Doc. #7).

9                 In support of their assertion that the court should realign the parties, plaintiffs cite several  
 10                 cases, including two United States Supreme Court cases: *Chicago, R.I & P.R. Co. v. Stude*, 346 U.S.  
 11                 574 (1954) and *Mason City & Ft. D.R. Co. v. Boynton*, 204 U.S. 570 (1907). The court realigned  
 12                 the parties in these cases because the relevant state law classified the parties in a manner contrary  
 13                 to federal law; the court held that federal law determines who is the plaintiff and who is the  
 14                 defendant for removal purposes. *See Stude*, 346 U.S. at 580.

15                 These cases are inapposite. Here, plaintiffs instituted the case in state court. The complaint  
 16                 asks the court to enjoin any foreclosure and award damages and punitive damages. Thus, plaintiffs  
 17                 have acted as plaintiffs throughout the course of this case. It would be inappropriate to realign the  
 18                 parties, and the court declines to do so.

19                 Second, plaintiffs argue that the \$75,000 amount in controversy requirement has not been  
 20                 met. (Doc. #7). Specifically, plaintiffs note that the complaint only seeks recovery in excess of  
 21                 \$10,000. Further, plaintiffs argue that the injunctive relief claims do “not amount to a monetary  
 22                 award.” (Doc. #7).

23                 “In actions seeking declaratory or injunctive relief, it is well established that the amount in  
 24                 controversy is measured by the value of the object of the litigation.” *Cohn v. Petsmart, Inc.*, 281  
 25                 F.3d 837, 841 (9th Cir. 2002). In this case, the loan at issue is for \$244,266. (Doc. #1, Ex. 2).  
 26                 Therefore, the amount in controversy requirement is met. Accordingly, the court declines to remand  
 27                 this case to state court.

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1     **Motion to dismiss (doc. #6)**

2                 The instant complaint alleges two causes of action: (1) deceptive trade practices pursuant to  
 3 N.R.S. 598, *et seq.*, and (2) violation of N.R.S. chapter 107. (Doc. #1, Ex. 3). The complaint also  
 4 makes claims for declaratory relief, injunctive relief, and attorneys' fees. (Doc. #1, Ex. 3). Quality  
 5 now moves to dismiss the complaint for failure to state a claim upon which relief can be granted  
 6 pursuant to Federal Rule of Civil Procedure 12(b)(6). (Doc. #6).

7                 A complaint must include a "short and plain statement of the claim showing that the pleader  
 8 is entitled to relief." FED. R. CIV. P. 8(a)(2). The statement of the claim is intended to "give the  
 9 defendant fair notice of what the claim is and the grounds upon which it rests." *Bell Atlantic Corp.*  
 10 *v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted). Pursuant to Federal Rule of Civil  
 11 Procedure 12(b)(6), courts may dismiss causes of action that "fail[] to state a claim upon which relief  
 12 can be granted."

13                 The court must "accept all factual allegations in the complaint as true." *Tellabs, Inc. v.*  
 14 *Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007). Further, the court must draw all reasonable  
 15 inferences in plaintiff's favor. *Twombly*, 550 U.S. at 547. However, "[t]o survive a motion to  
 16 dismiss, a complaint must contain sufficient factual matter . . . to state a claim to relief that is  
 17 plausible on its face." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009) (internal citations omitted).  
 18 Although "not akin to a 'probability requirement,'" the plausibility standard asks for more than a  
 19 sheer possibility that a defendant has acted unlawfully. *Id.* "Where a complaint pleads facts that are  
 20 'merely consistent' with a defendant's liability, it 'stops short of the line between possibility and  
 21 plausibility of entitlement to relief.'" *Id.*

22                 **1. Deceptive trade practices**

23                 Plaintiffs' first cause of action alleges violations of Nevada's Deceptive Trade Practices Act,  
 24 N.R.S. chapter 598. (Doc. #1, Ex. 3). Specifically, plaintiffs assert that Quality prepared and  
 25 executed false and void assignments and other trust deed documents and that Quality does not have  
 26 the authority to foreclose. (Doc. #1, Ex. 3). In its motion to dismiss, Quality argues that the  
 27 Deceptive Trade Practices Act is inapplicable to alleged flaws in mortgage foreclosures. (Doc. #6).

1       Many courts have recognized that the Deceptive Trade Practices Act does not apply to real  
 2 property transactions, but to the sale of goods and services. *See Reyna v. Wells Fargo Bank, N.A.*,  
 3 No. 2:10-cv-01730-KJD-RJJ, 2011 WL 2690087, at \*9 (D. Nev. July 11, 2011) (“N.R.S. § 598 . . .  
 4 applies only to goods and services and not to real estate loan transactions.”); *see also Alexander v.*  
 5 *Aurora Loan Services*, No. 2:09-cv-1790-KJD-LRL, 2010 WL 2773796, at \*2 (D. Nev. July 8, 2010)  
 6 (“Plaintiff’s claim deals with the sale or lease of real property, not goods or services; therefore  
 7 [N.R.S. § 598] does not provide an avenue of relief to [p]laintiff.”); *Parker v. Greenpoint Mortgage*  
 8 *Funding*, No. 3:11-cv-00039-ECR-RAM (D. Nev. July 15, 2011) (N.R.S. § 598 “does not cover a  
 9 mortgage foreclosure”).

10      Accordingly, plaintiffs’ first cause of action is dismissed.

11      **2. Violation of N.R.S. chapter 107**

12      Plaintiffs’ second cause of action alleges violations of N.R.S. chapter 107. (Doc. #1, Ex. 3).  
 13 Specifically, plaintiffs assert that Quality failed to provide plaintiffs with a copy of the note during  
 14 the foreclosure process. Further, plaintiffs allege that Quality did not have authority to notice the  
 15 trustee’s sale and conduct a foreclosure sale because MERS lost its ability to assign the deed of trust  
 16 once the loan was securitized into a bond held by Government National Mortgage Association.  
 17 (Doc. #1, Ex. 4). In its motion to dismiss, Quality states that N.R.S. 107.080, which was in effect  
 18 as of the date the foreclosure began in this case, did not require production of the note or proof of  
 19 holder status to proceed with a trustee’s sale. (Doc. #6). Further, Quality states that it had the  
 20 authority to foreclose on the note because MERS retained the ability to assign the deed of trust.  
 21 (Doc. #6).

22      The “case law within this district holds that the Nevada law governing nonjudicial  
 23 foreclosure . . . does not require a lender to produce the original note as a prerequisite to nonjudicial  
 24 foreclosure proceedings.” *Byrd v. Meridian Foreclosure Service*, 2011 WL 1362135, at \*2 (D. Nev.  
 25 2011); *see also Urbina v. Homeview Lending, Inc.*, 681 F. Supp. 2d 1254, 1258 (D. Nev. 2009);  
 26 *Kwok v. Recontrust Company, N.A.*, 2010 WL 4810704, at \*4 (D. Nev. 2010). The court finds that  
 27 Quality substantially complied with Nevada’s nonjudicial foreclosure process pursuant to N.R.S.  
 28

1 chapter 107.

2 It is well-established that MERS has the authority to make assignments and substitutions.  
3 See, e.g., *Cervantes v. Countrywide Home Loans, Inc.*, 656 F.3d 1034, 1044 (9th Cir. 2011); *In re*  
4 *Mortgage Electronic Registration Systems (MERS) Litigation*, 2011 WL 4550189 (MDL Oct. 3,  
5 2011). Further, “[s]ecuritization does not bar a party from initiating foreclosure proceedings.”  
6 *Birkland v. Countrywide Home Loans, Inc.*, 2012 WL 83773, at \*4 (D. Nev. 2012). Therefore,  
7 plaintiffs’ pleadings are not sufficient to establish that Quality did not have authority to foreclose,  
8 and dismissal of plaintiffs’ second cause of action is appropriate.

9       **3. Declaratory relief, injunctive relief, and attorneys’ fees**

10       A claim for declaratory relief is a remedy, not a cause of action. *See Stock West, Inc. v.*  
11 *Confederated Tribes of the Colville Reservation*, 873 F.2d 1221, 1225 (9th Cir. 1989). The  
12 declaratory relief remedy derives from the substantive claims for relief. *Roberts v. McCarthy*, 2011  
13 WL 1363811, at \*4 (D. Nev. 2011). Similarly, injunctive relief is a remedy, not an independent  
14 cause of action. *Alandia v. US Bank*, 2009 WL 4611442, at \*3 (D. Nev. 2009). If the substantive  
15 claims fail, then the claims for declaratory and injunctive relief also fail.

16       As discussed in this order, plaintiffs’ substantive claims fail to state a claim upon which relief  
17 can be granted. Therefore, plaintiffs’ claims for declaratory and injunctive relief and attorneys’ fees  
18 also fail.

19       Accordingly,

20       IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiffs Daryl C.  
21 Tillman, et. al.’s motion to remand (doc. #7) be, and the same hereby is, DENIED.

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1 IT IS FURTHER ORDERED that Defendant Quality Loan Service Corporation's motion to  
2 dismiss (doc. #6) be, and the same hereby is, GRANTED.

3 DATED April 13, 2012.  
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5 *James C. Mahan*  
6 **UNITED STATES DISTRICT JUDGE**  
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